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FILED
APR 17 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RMW
PVT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SHARLENE P. ABRAMS,)
)
Defendant.)

CR 08

0252

VIOLATIONS:
26 U.S.C. § 7201 - Income Tax Evasion;
26 U.S.C. § 7206(2) - Aiding and Assisting
in the Preparation of False Tax Returns

INDICTMENT

The Grand Jury charges:

GENERAL ALLEGATIONS

1. At all times material to this Indictment, defendant SHARLENE P. ABRAMS ("ABRAMS") resided in Los Gatos, California, and between 1993 and November 2001, ABRAMS served as Chief Financial Officer for Mercury Interactive Corporation. At various times during this period, ABRAMS also served as Secretary and Vice President of Finance and Administration. ABRAMS had the additional title of Securities Compliance Officer as early as May 30, 1996, and was appointed a member of the stock option committee on July 15, 1999.

2. At all times material to this Indictment, Mercury Interactive Corporation ("Mercury") was a Delaware Corporation with its headquarters in Mountain View, California. Mercury was a publicly traded corporation that made software used to test and optimize

1 information technology systems and software applications.

2 3. At all times material to this Indictment, Amnon Landan ("Landan") was
3 Mercury's Chief Executive Officer and Kenneth Klein ("Klein") was Mercury's Chief Operating
4 Officer.

5 STOCK OPTIONS AND THEIR TAX TREATMENT

6 4. The term "stock option" refers to a right granted by a company to purchase a
7 specific number of shares of the company's stock at a specified price for a pre-determined period
8 of time.

9 5. The term "employee stock option" refers to a stock option granted by a company
10 to one of its employees. An employee to whom a stock option is granted typically must wait a
11 specified vesting period before being allowed to exercise the option.

12 6. "Exercise price" or "strike price" refers to the price at which the holder of an
13 option will be permitted to purchase stock. That price is set on the day the stock option is
14 granted.

15 7. The term "vesting" refers to the ownership right that an employee acquires
16 through length of service at the company. A vesting schedule requires that a specified period of
17 time elapse after the options are granted before they can be exercised.

18 8. The tax treatment of stock options depends upon the type of options received by
19 the employee. During the relevant period, the Internal Revenue Code and associated regulations
20 recognized two types of options received by employees: incentive stock options ("ISOs") and
21 non-qualified stock options ("NQs"). ISOs are defined in Section 422 of the Internal Revenue
22 Code; all other options are deemed NQs.

23 9. A stock option agreement sets forth the terms of the options the company has
24 granted to an employee. Such an agreement specifies the type of options (ISOs or NQs), the
25 number of options, the exercise price, the vesting schedule, and the expiration date for the
26 options.

27 10. Federal tax laws require the payment of ordinary income tax on gains realized
28 upon the exercise of NQs. Thus, if a person exercises NQs, thereby purchasing stock at a lower

1 price than fair market value ("FMV") on that date, the difference between the purchase price and
2 FMV is taxed as ordinary income.

3 11. Although federal tax laws typically do not require the payment of ordinary income
4 tax upon the exercise of ISOs, the difference between FMV and the exercise price is included in
5 alternative minimum tax ("AMT") income, which may trigger the imposition of the AMT.
6 Profits from the sale of shares received through an exercise of ISOs may qualify to be taxed at
7 the long-term capital gains rate, which is more favorable than regular income tax rates, provided
8 other conditions are met.

9 THE MERCURY STOCK OPTION PLANS

10 12. During the relevant period, Mercury granted options to its employees and
11 executives under the 1989 Stock Option Plan and the 1999 Stock Option Plan, as amended at
12 various times.

13 13. The purposes of the stock option plans were "to attract and retain the best
14 available personnel for positions of substantial responsibility, to provide the additional incentive
15 to such individuals of the Company and to promote the success of the Company's business."

16 14. Options granted under the stock option plans could be either ISOs or NQs, at the
17 discretion of the Administrator and as reflected in the terms of the written option agreement.

18 15. Pursuant to the stock option plans, an option was exercised "when written notice
19 of such exercise has been given to the Company in accordance with the terms of the Option by
20 the person entitled to exercise the Option and full payment for the Shares with respect to which
21 the Option is exercised has been received by the Company."

22 THE BACKDATING SCHEME

23 16. ABRAMS supervised the exercises of stock options for officers and executives.
24 Officers and executives typically exercised their stock options and then held the stock for a
25 period of time, usually at least one year to take advantage of the lower long-term capital gains tax
26 rate.

27 17. In April and May 2001, ABRAMS orchestrated the backdating of stock option
28 exercise dates for herself, Landan, and Klein in order to reduce the income taxes due on the gains

1 realized by the exercises. ABRAMS searched for the low point in the price of Mercury stock and
 2 backdated the exercises for herself, Landan and Klein to April 4, 2001, the low point, to reduce
 3 the ordinary income tax upon the exercise of NQs or to reduce AMT income on the exercise of
 4 ISOs.

5 18. In August 2001, ABRAMS orchestrated the backdating of stock option exercise
 6 dates for herself in order to reduce the income taxes due on the gains realized by the exercises.
 7 ABRAMS searched for the low points in the price of Mercury stock and backdated the exercises
 8 for herself to the low points of July 18, 2001, and July 24, 2001, to reduce the ordinary income
 9 tax upon the exercise of NQs.

10 19. The backdated stock option exercises for ABRAMS in May and August 2001 are
 11 summarized in the following table:

Option Number	Option Type	Option Price	Number of Shares	Backdated Date	Stock Price on Backdated Date	Actual Date of Exercise	Stock Price on Actual Date of Exercise
1590	NQ	\$6.32	29,999	4/4/01	\$31.88	5/3/01	\$67.41
1659	NQ	\$6.32	701	4/4/01	\$31.88	5/3/01	\$67.41
1289	NQ	\$2.44	14,801	4/4/01	\$31.88	5/3/01	\$67.41
778	NQ	\$12.03	18,333	7/18/01	\$34.19	8/3/01	\$39.15
1030	NQ	\$18.25	5,520	7/18/01	\$34.19	8/3/01	\$39.15
778	NQ	\$12.03	1,667	7/24/01	\$34.93	8/3/01	\$39.15

20 20. The backdated stock option exercises for Landan in April 2001 are summarized in
 21 the following table:

Option Number	Option Type	Option Price	Number of Shares	Backdated Date	Stock Price on Backdated Date	Actual Date of Exercise	Stock Price on Actual Date of Exercise
1494	NQ	\$3.19	14,832	4/4/01	\$31.88	4/9/01	\$40.44
1009	ISO	\$3.19	31,347	4/4/01	\$31.88	4/9/01	\$40.44
1009	NQ	\$3.19	237,821	4/4/01	\$31.88	4/9/01	\$40.44

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21. The backdated stock option exercises for Klein in May 2001 are summarized in the following table:

Option Number	Option Type	Option Price	Number of Shares	Backdated Date	Stock Price on Backdated Date	Actual Date of Exercise	Stock Price on Actual Date of Exercise
507	ISO	\$3.10	4,376	4/4/01	\$31.88	5/3/01	\$67.41
552	ISO	\$4.19	34,636	4/4/01	\$31.88	5/3/01	\$67.41
1023	ISO	\$3.19	87,261	4/4/01	\$31.88	5/3/01	\$67.41
1011	ISO	\$3.19	238,312	4/4/01	\$31.88	5/3/01	\$67.41
352	ISO	\$2.32	1	4/4/01	\$31.88	5/3/01	\$67.41

COUNT ONE: (26 U.S.C. § 7201)

On or about April 15, 2002 in the Northern District of California, the defendant

SHARLENE P. ABRAMS

then a resident of Los Gatos, California, who during the calendar year 2001 was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by her and her spouse to the United States of America for the calendar year 2001, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was the sum of \$898,361, and that the amount of tax due and owing thereon was the sum of \$520,388, whereas, as defendant SHARLENE P. ABRAMS then and there well knew and believed, their true joint taxable income for said calendar year was greater than the amount reported and an additional tax was due and owing to the United States of America.

In violation of Title 26, United States Code, Section 7201.

COUNT TWO: (26 U.S.C. § 7206(2))

On or about October 22, 2002 in the Northern District of California, the defendant

SHARLENE P. ABRAMS

then a resident of Los Gatos, California, did willfully aid and assist in, and procure, counsel and advise, the preparation and presentation to the Internal Revenue Service of a false and fraudulent

1 U.S. Individual Income Tax Return, Form 1040, for Amnon Landan and his spouse, for the
2 calendar year 2001, which was false and fraudulent as to a material matter, as defendant
3 SHARLENE P. ABRAMS then and there well knew and believed, in that said return reported
4 less total joint taxable income on Line 39 of Form 1040 than was required to be reported, and
5 reported less alternative minimum taxable income on Line 21 of Form 6251 than was required to
6 be reported.

7 In violation of Title 26, United States Code, Section 7206(2).

8 **COUNT THREE:** (26 U.S.C. § 7206(2))

9 On or about April 15, 2002 in the Northern District of California, the defendant

10 SHARLENE P. ABRAMS

11 then a resident of Los Gatos, California, did willfully aid and assist in, and procure, counsel and
12 advise, the preparation and presentation to the Internal Revenue Service of a false and fraudulent
13 U.S. Individual Income Tax Return, Form 1040, for Kenneth Klein and his spouse, for the
14 calendar year 2001, which was false and fraudulent as to a material matter, as defendant
15 SHARLENE P. ABRAMS then and there well knew and believed, in that said return reported
16 less total alternative minimum taxable income on Line 21 of Form 6251 than was required to be
17 reported.

18 In violation of Title 26, United States Code, Section 7206(2).

19 A TRUE BILL.


20
21 Dated: 4-17-08


FOREPERSON

22
23 JOSEPH P. RUSSONIELLO
24 United States Attorney

25
26 
BRIAN STRETCH

27 Chief, Criminal Division

28 (Approved as to form: )
AUSA DENIER